

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

RODERICK JEROME MOORE,

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Petitioner,

versus

CIVIL ACTION NO. 9:22-CV-90

DIRECTOR, TDCJ-CID,

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Respondent.

**MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING THE
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Petitioner. Roderick Jerome Moore, a prisoner currently confined at the Alfred Hughes Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed what appeared to be a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court has received and considered the Report and Recommendation of the magistrate judge filed pursuant to such order, along with the record, and pleadings (#3). Petitioner filed Objections to the Report and Recommendation (#8). This requires a *de novo* review of the objections in relation to the pleadings and applicable law. *See* FED. R. CIV. P. 72(b).

The magistrate judge recommended Petitioner's habeas claims be dismissed as barred by the applicable statute of limitations and that his civil rights claims are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). Petitioner's objections fails to address either bar and, thus, lack merit.

ORDER

Accordingly, Petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in accordance with the recommendation of the magistrate judge.

Furthermore, the court is of the opinion that Petitioner is not entitled to a certificate of appealability. An appeal from a judgment denying post-conviction collateral relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253. The standard for a certificate of appealability requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, the petitioner need not establish that he would prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84. Any doubt regarding whether to grant a certificate of appealability should be resolved in favor of the petitioner, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280-81 (5th Cir.), cert. denied, 531 U.S. 849 (2000).

In this case, Petitioner has not shown that any of the issues would be subject to debate among jurists of reason. The questions presented are not worthy of encouragement to proceed further.

Therefore, Petitioner has failed to make a sufficient showing to merit the issuance of certificate of appealability. Accordingly, a certificate of appealability will not be issued.

SIGNED at Beaumont, Texas, this 9th day of March, 2023.


Marcia A. Crone
MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE